C.M.P.M.O. 259 of 2007

30.11.2007 Present: Mr. Vikas Bhardwaj, Advocate for the petitioner.

The petitioner is aggrieved by the order of the learned Civil Judge (Senior Division), Dharamshala, dated 1.10.2007, whereby his application for amendment of the Written Statement has been dismissed. The Written Statement in question was filed on 25th November, 2002, after the amendment to the Civil Procedure Code. Order 6, Rule 17 CPC as amended on 1.7.2002 reads as follows:-

> "17. **Amendment of pleadings.** – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:
>
> Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

A bare perusal of Order 6, Rule 17 as amended shows that the legislature has made it mandatory that no amendment can be allowed unless the Court comes to the conclusion that the parties seeking amendment, in spite of due diligence could not have raised the matter before the commencement of the trial. In the application for amendment, there is not a single averment giving any explanation as to why the facts now sought to be incorporated could not be pleaded earlier. A perusal of the application for amendment also shows that certain admissions made in the Written Statement were sought to be withdrawn which could not have been permitted.

Even in respect of other amendments sought for, the allegations of collusion between the plaintiffs 5 to 7 already stand made in the original Written Statement. The pleadings of the parties do not have to contain the evidence. What is now sought to be brought on record by way of amendment is only elaboration of the pleadings, which is not required. The order calls for no interference. The petition is, therefore, rejected.

CMP No. 935 of 2007.

In view of the rejection of the main petition, this CMP also stands disposed of.

November 30, 2007(KS) (Deepak Gupta), ACJ